



# The Brown Act

Charter Review Commission

April 13, 2007



# The Brown Act

- Is intended to ensure that deliberations and actions of local agency legislative bodies are open and public and that there is meaningful public access to their decisionmaking
- The Act requires that meetings be open to the public, held on a regular schedule, and conducted in accordance with an agenda available in advance of the meeting
- No secret ballots allowed
- Meetings must be open unless there is a specific section in the Act that permits a closed session

# Who is Subject to the Brown Act?

- Applies to “legislative bodies” including advisory committees created by ordinance of the San Diego City Council
- Committee members, from time of appointment
- Subcommittees created by formal action of the advisory committee
  - But not temporary ad hoc advisory committees made up solely of committee members and constituting less than a quorum

# What Constitutes a Meeting?

- Any congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on any item that is within the subject matter jurisdiction of the committee
- Serial meeting / series of communications
  - Beware of email communications
    - A majority cannot email each other to discuss topics before the committee
  - Beware of “serial” contacts
    - “A to B” and “B to C” can lead to a “collective concurrence.”

# What is Not a Meeting?

- Individual contacts between a committee member and another person
  - Majority of the members at a:
    - ☐ Conference open to the public
    - ☐ Local public meeting
    - ☐ Open meeting of another body
    - ☐ Social or ceremonial event
- But, cannot discuss committee matters among themselves at these events



# Public Contacts

- Communication with a member of the public does not violate the Act, but may raise due process issues for quasi-judicial matters
- If an individual contacts a quorum of the committee, the members should not respond outside public meeting – deliberations should occur in public
- One-way transmission of background materials and solitary review by committee members would not violate Act



# When Can Meetings Be Held?

- Regular meetings:  
Agenda posted 72 hours before
- Special meetings:  
Called by chair or majority of committee members, agenda posted 24 hours before
- Emergency meetings:  
Immediately, must be a real emergency, such as a situation that impairs public health, safety or both



# Where Can Meetings Be Held?

- Within the boundaries of the City, unless a specific exemption applies
- Meetings must be accessible under the Americans with Disabilities Act of 1990





# Agenda Descriptions

- Brief general description of each item (less than 20 words)
- Include the date, time and location of the meeting
- Must inform public of scope of the committee's intended plans so public can decide whether to participate
- Must be posted in a location "freely accessible to members of the public"



# Consideration of Matters Not on the Meeting Agenda

- Only if:

- ☐ Majority vote determines an “emergency” exists
- ☐ Two-thirds vote determines the need to take immediate action occurred after agenda was posted


# Public Right to Comment

- Regular meeting
  - Public may comment on any matter within the committee's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
  - Public also must be allowed to comment on agenda items
  - Reasonable regulations, including time limits may be adopted



# Public Right to Comment

- Special meeting
  - Comments must be allowed on agenda items
  - Committee may allow non-agenda comment, but not required
- Committee must allow criticisms and complaints
- Public comments are made before action is taken



# Limited Response to Public Comment on Items Not on Agenda

- May make a brief response to statements or questions permitted, but no discussion or action
- May briefly announce or report on member's own activities
- May ask questions for clarification
- May refer the matter to staff for:
  - ☐ Information
  - ☐ Request to report back
  - ☐ Direct to place matter on a future agenda

# Public Right to Attend

- Public cannot be required to register their names or provide other information as a condition of attending meeting
  - Voluntary sign-in is allowed
  - Unclear whether public can be required to provide names and other information to participate unless necessary to the subject matter



# Public Right to Attend

- Public has a right to record the meeting with an audio or video tape recorder, or take photographs
- Public has a right to review agendas and other writings distributed to a majority of the committee members

# Violations of Brown Act

## ■ Civil Actions

- ☐ Any interested party may begin action
- ☐ The committee will have an opportunity to cure and correct actions taken
- ☐ With judgment, action is void, with certain exceptions
- ☐ Costs & attorney fees may be awarded

## ■ Criminal penalties

- ☐ With intent to deprive public of information
- ☐ Guilty of a misdemeanor





# Overview

- All meetings shall be open and public
- Actions and deliberations must be taken openly
- All persons shall be permitted to attend and participate in the meetings

# Questions?

